

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

TROY K. SCHEFFLER,

Plaintiff,

v.

ORDER

Civil File No. 19-1751 (MJD/LIB)

FIRST NATIONAL OF NEBRASKA, INC.;
FIRST NATIONAL BANK OF OMAHA; and
GOERLITZ LAW, PLLC;

Defendants.

Troy K. Scheffler, pro se.

Jared M. Goerlitz, Goerlitz Law, PLLC, Counsel for Defendants First National of Nebraska, Inc. and First National Bank of Omaha.

Michael A. Klutho and Patrick D. Newman, Bassford Remele, Counsel for Goerlitz Law, PLLC.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Leo I. Brisbois dated January 3, 2020. Plaintiff Troy K. Scheffler filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court adopts the Report and Recommendation of United States Magistrate Judge Brisbois dated January 3, 2020.

With regard to Plaintiff's objection that the Magistrate Judge failed to allow him to appear telephonically for the hearing, the Court upholds the Magistrate Judge's decision because Plaintiff failed to follow the procedures set forth in Local Rule 7.3 to request to appear by telephone. Moreover, assuming without deciding that Plaintiff qualified for a telephonic appearance as reasonable accommodation, the Court concludes that Plaintiff's failure to appear at oral argument does not warrant reversal of the Report and Recommendation because there was no prejudice. The Report and Recommendation is properly based solely on the contents of Plaintiff's Amended Complaint. Additionally, Plaintiff fully briefed his arguments in an opposition brief and a sur-reply. (See also [Docket No. 30] Nov. 19, 2019 Minute Entry ("Plaintiff informed the Court via email, with a copy to all counsel, that he would not appear at the Motion Hearing and would rely on his written brief.")) Plaintiff then further explained his position in his objections to the Report and Recommendation.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED:

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Leo I. Brisbois dated January 3, 2020 [Docket No. 35].
2. Defendant First National Bank of Omaha's Motion to Dismiss [Docket No. 12] is **GRANTED**, and Counts 2-8 and the class allegations of the Amended Complaint, as alleged against Defendant First National Bank of Omaha, are **DISMISSED WITHOUT PREJUDICE**.

Dated: February 4, 2020

s/ Michael J. Davis

Michael J. Davis

United States District Court